IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

Cont.Case(C).No.1429 of 2006(S)

JUDGEMENT IN W.P.(C).NO.6368/2006 DATED 8.3.2006.

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PETITIONERS (PETITIONERS IN THE WRIT PETITION):-

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1. VALLIKADAN MOYIN HAJI,
   S/O. VALLIKADAN ALAVI, AGED 75 YEARS,
   VALACHETTIYIL HOUSE, P.O. PULIYAKKODE,
   (VIA) KUZHIMANNA, MALAPPURAM DISTRICT.

2. MUHAMMED, S/O. VALLIKADAN MOYIN HAJI,
   AGED 45 YEARS, VALACHETTIYIL HOUSE,
   P.O. PULIYAKKODE, (VIA) KUZHIMANNA,
   MALAPPURAM DISTRICT.

BY ADV. SRI.R.RAJESH KORMATH

RESPONDENTS (RESPONDENTS 3 AND 4 IN THE WRIT PETITION):-

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1. SHAJI K.ABRAHAM,
   FATHER'S NAME AND AGE NOT KNOWN TO THE PETITIONER,
   SUB INSPECTOR OF POLICE, AREACODE POLICE STATION,
   AREACODE P.O., MALAPPURAM DISTRICT.

2. P. SHAMSE,
   FATHER'S NAME AND AGE NOT KNOWN TO THE PETITIONER,
   THE CIRCLE INSPECTOR OF POLICE, MANJERI POLICE STATION,
   MANJERI, MALAPPURAM DISTRICT.

BY GOVERNMENT PLEADER SRI.T.B.HOOD.

THIS CONTEMPT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 15/11/2006, THE COURT 20/11/2006 DELIVERED THE FOLLOWING:-

V.K.Bali,C.J. & P.R.Raman,J.

Cont.Case (C).No.1429 of 2006-S

Dated, this the 20th day of November, 2006

JUDGMENT

V.K.Bali,C.J.

Petitioners complain violation of directions issued by Division Bench in W.P.(C).No.6368 of 2006-G dated 8.3.2006. By filing the present contempt petition, they seek appropriate action against respondents under the provisions of Sections 11 and 12 of the Contempt of Courts Act, 1971.

2. Brief facts of the case would reveal that petitioners are defendants in a civil suit pending in the Court of Munsiff, Manjeri. The plaintiffs have been arrayed as respondents 1 and 2 in the aforesaid writ petition. They have sought an injunction and during the currency thereof, they maintained an application for ad interim injunction lasting the pendency of the suit, on which Munsiff passed an order of status quo. As per version of the petitioners herein, the injunction is not to alter the pathway and

not to cause obstruction, but according to them it is a private pathway and the plaintiffs in the suit have no right of user of the pathway. When the dispute was so pending with the order as mentioned above, the petitioners herein were called by the police allegedly at the instance of the plaintiffs in the suit. The petitioners, thus, filed writ petition mentioned above, in which the learned Division Bench passed the order, relevant part thereof reads as follows:-

> "While the police is free to investigate as regards the complaint with reference to any criminal act on the part of the petitioner, they shall not, however, interfere with the civil rights of the parties and the same shall be decided and adjudicated by the civil court".

It is these directions which are said to have been violated, for which the petitioners seek appropriate action against the

respondents. The facts that have been pleaded in the present petition would reveal that vide order Annexure-A3 dated 7th July, 2006, the learned Munsiff, Manjeri has directed the Sub Inspector of Police to see that injunction order is obeyed by the petitioners herein and the wife of the 1st petitioner and by another order Annexure-A14 dated 26th August, 2006 the learned Munsiff has granted police aid to the plaintiffs to fill the ditches in the plaint schedule road. It is further the case of the petitioners that under the guise of these orders, the respondents in the present contempt petition and plaintiffs in the original lis have started constructing and cutting open forcibly a pucca road through the disputed property using J.C.B. Machine, even through the property of strangers to the suit. This action on the part of the respondents is alleged to be in violation of the directions given by this Court reproduced above.

3. We have heard learned counsel for the petitioners, but in the context of the facts of the present case we find no

violation of any order by the respondents in this contempt petition. Concededly an order of injunction has been passed against the petitioners and by yet another interim order the learned Munsiff has directed police aid to fill up the ditches in the plaint schedule road. If the order providing help may not be to the liking of the petitioners, they can rather agitate the same by way of an appeal. If in the guise of the injunction order the respondents are doing something which they cannot be permitted, the remedy open to the petitioners may be to seek injunction against the plaintiffs either in the pending suit or by filing a separate suit. We may mention at this stage that counsel for the petitioners himself states that the orders passed by the learned Munsiff have since been challenged by way of appeal, which is pending. Be that as it may, the Court finds no violation of the orders passed in the writ petition reproduced above, simply because the plaintiffs in the civil suit and the respondents in the present contempt petition are doing something which is allegedly

in the guise of injunction order, but actually not permissible.

There is no merit in the contempt petition and the same is thus dismissed.

Sd/-
V.K.Bali
Chief Justice

Sd/-
P.R.Raman
Judge

vku/-

- true copy -

P.A.to Judge.